IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7420 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRAKUMAR N KATARGAMWALA & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS KJ BRAHMBHATT for Petitioner(s) : 1 - 2.
MR MR MENGDEY, AGP for Respondent(s) : 1, 3,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/10/2005

ORAL JUDGMENT

1.Rule. Shri MR Mengdey, learned AGP waives service of rules on behalf of the respondent Nos.1 and 3.

2.With the consent of the ld. Advocates for the parties,

the matter is taken up for final hearing today.

3. In this petition under Article 226 of the Constitution of India the petitioners have prayed for appropriate writ, direction and/or order against the respondents forbearing them from allotting further plots for the purpose of residence, otherwise then in accordance with the rules framed in that behalf. The petitioners have also prayed for an appropriate writ, direction and/or order directing the respondents to set right the illegal allotments of the plots made by the respondent No.3 in favour of several persons till the date in violation of the procedure laid down in the rules and further directing them to allot the plots to the petitioners either of the size applied for by them or of any other size and payment of the difference of earnest money if required.

4. During the pendency of the petition the policy with regard to the allotments of the plots at Saputara Hill Station came to be modified vide resolution dated 12-12-91 and therefore by way of an amendment the petitioners have also prayed for appropriate writ, direction and order forbearing the respondents, their agents and servants from implementing and enforcing the said resolution dated 12-12-91 as regards 19 plots in

category II as indicated in the Master Plan and further directing them to allot the petitioners plots from the said category and to fulfill their obligation under the rules.

5. For the development of the Saputara Hill Station the State Government constituted the Saputara Hill Station Developing Committee. The State Government also framed the rules namely Rule for Allotment of Flats at Saputara Hill Station. Rule 4 of the rules provides the procedure before forwarding the matter of allotment of plots for the purpose of constructing the residential houses. It is the case of the petitioners that the said rule further provides that if the number of applicants for the residential plots exceeding the number of plots available then the plots would be alloted by drawing the lots. Rule 23 of the said rules provides the procedure to be followed for the allotment of the plots for the residential purpose. The said rule also provides that the allotment of the plots for commercial purpose would be made either by allotment or by public notice. It is the contention on behalf of the petitioners that relying upon the aforesaid provisions made in the rules, they have applied in the prescribed form for the allotment of the plot to them at Saputara

Hill Station for the residential purpose and in the present case they are concerned with category No.2. It is the case of the petitioners that each of the petitioner had also furnisehd a cheque of Rs.1200/- along with their applications towards earnest money and they were also issued the receipts by the respondent No.3. It is the contention of the petitioners that though the plots were available for allotment, they were not alloted the plots and the plots were alloted to other persons dehors the rules and though they have applied for the allotment of the plots later in point of time than the petitioners. It is the case of the petitioners that the petitioners were in the waiting list of the allotment of the plots at serial Nos.1 and 2 and therefore they have preferred the present Special Civil Application with the aforesaid prayers. As stated above in the meantime and after the present Special Civil Application was filed, the policy with regard to the allotment of the plots at Saputara Hill Station for residential purpose came to be modified vide resolution dated 12-12-91 and it was decided to allot the plots by public auction only considering the provision of Bombay Land Revenue Code and Rules thereunder and therefore the petitioners have also prayed to quash and set aside

the said resolution and have also prayed for directing the the respondents to allot the plots to them for residential purpose as per the earlier policy for which they have already applied.

6. Ms KJ Brahmbhatt, learned advocate appearing on behalf of the petitioners has vehemently submitted that the petitioners are at serial Nos.1 and 2 of the waiting list and persons mentioned in the petition though had applied subsequently to the petitioners, they have alloted the plots, however, the petitioners are not alloted the plots for residential purpose. She has also submitted that the allotment of the plots to various persons is contrary to the rules and the policy of the State Government and therefore the same is required to be quashed and set aside. It is also further submitted by her that when the petitioners had already applied for the residential plots as per the earlier policy and they have also paid the earnest money unless and until they are alloted the plots, no new policy decision could have been taken by the State Government and they are bound to allot the plots as per the earlier policy and the earlier rules. It is the contention of the petitioners that earlier applications, which were received by the respondents, were more than available

plots and they were required to allot the plots by following the procedure of drawing the lots. Still without following any procedure, they were alloted the plots without drawing the lots and therefore, it is requested to quash and set aside the same. It is further submitted that there were still 19 plots in category II indicating in the Master Plan vacant, still under the guise of the new resolution dated 12-12-91 they have been denied the plots and as they have already applied for the allotment of the plots as per the earlier policy, the action of the respondents and the resolution dated 12-12-91 is barred by the principle of promissory estoppel, therefore it is requested to allow the the present Special Civil Application and to allot the plots to the petitioners as per the earlier rules and the policy. Miss Brahmbhatt, learned advocate has also submitted that the petitioners are not even refunded the earnest money deposited by them in 1982 and therefore, it is requested to allow the present Special Civil Application.

7. The present Special Civil Application is opposed by the respondents and affidavit-in-reply is also filed on behalf of the respondents and it is asserted that the

allotment of the plots have been strictly done in accordance with rules governing the field and the procedure prescribed by the rules for allotment of the plots for residential purpose as well as commercial purpose has been strictly followed. It is also further submitted that so far as the allegation with regard to one Durlabhbhai Vallabhbhai Patel is concerned, his case falls under category III and as the plots in category III were available, Shri Durlabhbhai was alloted the same as per his priority on 15-2-88. It is also further submitted that so far as the petitioners are concerned, they were in waiting list of category II and they stand at serial Nos.26 and 27 and the applicants from serial Nos.1 to 24 have been alloted the plots serial-wise and strictly in accordance with priority, barring those who have been refunded the earnest money on their request. It is also further submitted that the applicant at serial No.25 has also asked for the refund who has been refunded the earnest money. Shri Mengdey, learned AGP meeting with the challenge to the Government Resolution dated 12-12-91, has submitted that it is the policy decision taken by the State Government and it has been decided to allot the plots available for residential purpose by public

auction, which is in public interest and it is neither unreasonable nor arbitrary and therefore, it is requested to dismiss the present Special Civil Application.

8. Heard learned advocates for the parties.

9. It appears from the record that the petitioners have applied for the residential plots in category II on 31-5-82 and they were at serial Nos.26 and 27 in the waiting list. The respondents alloted the plots to the applicants, who were at serial Nos.1 to 24. It is the contention on behalf of the petitioners that the respondents have alloted the plots dehors the rules and therefore request to quash and set aside the said allotment. However, it is required to be noted that the petitioners have not joined all those persons / allotees, who are likely to be affected and whose allotment is to be cancelled or quashed and set aside. Under the circumstances in their absence the petitioners are not entitled to any relief against them and therefore, such a prayer to quash and set aside the allotment in their favour cannot be granted and is hereby rejected.

10. So far as the contention on behalf of the petitioners' challenge to the Government Resolution dated 12-12-91

is concerned, the same is based upon the promissory estoppel and on the basis of the promise. It is the contention of the petitioners that the petitioners had applied for the plots as per the policy and the rules governing the field at the relevant time and unless and until they are alloted their plots, the Government either should not implement the new resolution and/or they must first allot the plot as per the earlier policy and the rules. It is firstly required to be noted that mere inviting application for allotment of the plot cannot be said to be giving a promise to a person, who applies. Merely because the petitioners have applied for allotment of the plots, there was no promise given by the State Government that they will be alloted the plots. In the meantime, the State Government has taken a policy decision and it has been resolved to allot even residential plots by public auction and therefore on and after 12-12-91 even the residential plots are at Saputara Hill Station are required to be alloted only by holding public auction. As stated above there was no promise only by inviting applications and in the mean time, the policy came to be modified and/or changed. Therefore the contention of the petitioners that the said Government Resolution

dated 12-12-91 is barred by promissory estoppel cannot be accepted. So far as the resolution dated 12-12-91 is concerned, firstly it is in the realm of the policy decision of the State Government and by the said resolution dated 12-12-91, it has been decided to allot the residential plot by holding public auction only and the said decision is in the public interest and to avoid any favouritsm and that the State Government can get maximum price, which can be used for development of the Saputara Hill Station. To allot the residential plot by public auction cannot be said to be arbitrary and/or unreasonable.

11. Under the circumstances, the challenge to Government Resolution dated 12-12-91 also fails.

12. So far as the earnest money is concerned, the petitioners have never applied and/or submitted an application before the respondents for refund of the earnest money. Considering the affidavit-in-reply filed, those persons who had already applied and requested for refund for earnest money, they are already refunded their amount. Merely because the petitioners have not applied for refund of earnest money and the said earnest money came to be retained by the respondents, the same will not give any right in

favour of the petitioners to get the residential plot as per the earlier policy dehors the new Government Resolution dated 12-12-91. However, if the petitioners apply for refund of earnest money then the respondents are bound to refund the same to the petitioners.

13. For the reasons as stated above, the petition fails. However, it is directed that on proper application being made by the petitioners to the respondents for refund of earnest money of Rs.1200/- which the petitioners have deposited alongwith their applications dated 31-5-82, the respondents are directed to refund the said amount to the petitioners along with reasonable interest not more than 6% per annum.

14. With the above observations and directions, the petition is dismissed. Rule is discharged. Ad interim relief if any stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH,J)

Shekhar/-